

**SALES AND USE TAX REVIEW COMMISSION  
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

**BILL NUMBER:**

A-3499

**DATE OF INTRODUCTION:**

May 5, 2003

**SPONSORS:**

Assemblyman Gregg  
Assemblyman Blee

**DATE OF RECOMMENDATION:**

August 5, 2003

**IDENTICAL BILL:** A-205

**COMMITTEE:** Assembly Commerce and Economic Development

**DESCRIPTION:**

This bill amends the Urban Enterprise Zones Act to provide that sales of boats and marine products made to a qualified business for the exclusive use or consumption of such business within an Urban Enterprise Zone are no longer entitled to an exemption from sales tax. The bill further amends the Urban Enterprise Zones Act to require vendors in Urban Enterprise Zones and Urban Enterprise Zone-Impacted Business Districts to charge the full rate of sales tax on retail sales of boats and marine products. It also amends the Sales and Use Tax Act to require vendors located in Salem County to charge the full rate of sales tax on retail sales of boats and marine products.

**ANALYSIS:**

This bill makes two proposed changes to the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et. seq. First, the bill amends the Urban Enterprise Zones Act to provide that sales of boats and marine products are no longer entitled to an exemption from sales tax when made to a qualified business for the exclusive use or consumption of such business within an Urban Enterprise Zone.

The New Jersey Boat Industry Loan Guarantee Fund Act defines "boat" as "a vessel or watercraft, other than a personal watercraft or sea plane on the water, used or capable of being used as a means of transportation on water, which may be temporarily or permanently equipped with machinery for propulsion." N.J.S.A. 34:1B-7.30. This statute also defines "marine products" as "those parts and materials utilized in the design, construction and maintenance of boats, which shall include, but need not be limited to, parts and materials used in boat engines, generators, transmissions, exhaust systems and electrical, plumbing, heating and cooling systems, except that marine products shall not include any oil or oil-based products or materials." N.J.S.A. 34:1B-7.30.

The original intent of the Legislature in enacting the sales tax exemption for enterprise zone vendors was to create an incentive for businesses to locate to depressed areas within the State. To this end, the Legislature enacted an exemption for the purchase of most items of tangible personal property by a qualified business for the exclusive use or consumption on the premises of the qualified business at its zone location. Only personal property controlled by the qualified business qualifies for the exemption. Items such as office and business equipment and supplies, furnishings, trade fixtures, and repair or construction materials are examples of items that were initially viewed to fall within the exemption. Motor vehicles were specifically excluded by the Legislature. The reasoning behind the exclusion is that by definition motor vehicles are mobile; thus they cannot be exempt since the exemption applies only for items purchased for use exclusively at the place of business within the zone. The same reasoning applies to boats, since they are also mobile. This bill clarifies that boats and marine products are not entitled to the exemption since it is unlikely that they will ever be used exclusively at the place of business within the zone.

Second, the bill amends the Urban Enterprise Zones Act to require vendors in Urban Enterprise Zones and Urban Enterprise Zone-Impacted business districts to charge the full rate of sales tax on retail sales of boats and marine products. It also amends the Sales and Use Tax Act to require vendors located in Salem County to charge the full rate of sales tax on retail sales of boats and marine products.

The Statement to the bill clarifies that it is the sponsor's belief that the original Urban Enterprise Zone Program legislation inadvertently overlooked boat sales in providing for the retail sales tax exemption and that it was never the intent of the Legislature to create a disadvantage for boat and marine product retailers situated outside, but proximate to, Urban Enterprise Zones. This bill was thus enacted to level the playing field for boat and marine dealers located outside the enterprise zone. In other words, by excluding big ticket items such as boats and marine products (and automobiles) from the partial sales tax exemption, the unfair advantage created for Urban Enterprise Zone retailers on items of sufficient expense to justify travel into the zone for cost-savings will be eliminated.

If this bill were to take effect, competitors located outside of the zones and districts will no longer complain of and perceive unfair tax advantages for vendors located within the zones and districts. The regulations to the Urban Enterprise Zones Act states that,

“All sales made by a qualified and certified vendor must be made from his place of business within an enterprise zone, that is, either the purchaser must accept delivery at the vendor’s place of business within an enterprise zone, or the vendor must deliver the tangible personal property from its place of business within an enterprise zone.” N.J.A.C. 18:24-31.4(e). Thus, only receipts from sales which originate and are completed by the purchaser in person at the vendor’s place of business within an enterprise zone qualify for the reduced rate of sales tax; provided, however, that after a sale has been completed within an enterprise zone, the vendor may deliver the tangible personal property to the purchaser at a location outside an enterprise zone.

However, in order to make more sales, qualified vendors with store locations inside and outside of a zone may take orders at the store location outside of the zone, but process the sales through its zone location in order to charge the customer a reduced rate of tax. Even though the vendor is not violating the Urban Enterprise Zones Act because the customer comes to the zone location in order to accept delivery or the customer comes into the zone to execute the written contract or sales agreement, this puts vendors without an enterprise zone location at a significant disadvantage. This could also occur at boat and trade shows where competitors located outside of zones and districts do not have this benefit of delaying a sale in order to have the customer come to the zone in order to execute a sales agreement. The adoption of the bill will also discourage potential fraud by vendors who may falsify invoices to show that the sale was made within the zone or district but was actually made in an area where the property is subject to a full rate of tax.

In addition, this bill creates a significant advantage for the State’s General Fund since the sales tax revenue of property that is subject to the full rate of tax paid to a qualified vendor in a zone or district is remitted to the State and not to the municipality. The gain of revenue to the State is enhanced by the fact that boats and marine products are traditionally expensive items and a large block of sales tax revenue for the State. As a result of the changes in the law that this bill creates, the State’s budgetary crisis will be alleviated since the amount of monies that the State deposits in its General Fund will be increased.

The adoption of this proposal also solves a potential federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-State for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. A constitutional issue may result from boats purchased out-of-State for use in the urban enterprise zone. When registering,

the State would require sales tax to be paid at the rate of 6%, while the same boat purchased at the urban enterprise zone or district would only be subject to 3% sales tax. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%. By taking boats out of the purview of the Urban Enterprise Zones Act, the constitutional issue is mitigated.

Additionally, the bill solves the existing problem under the Urban Enterprise Zones Act whereby inequitable results are created in regard to the casual sale of used boats which are subject to 6% sales tax. In the urban enterprise zone cities, buyers of privately-sold boats complain when they have to pay 6% sales tax, compared to paying 3% sales tax for a boat from a nearby used boat dealer.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the Urban Enterprise Zones Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act currently creates a lower sales tax rate for transactions involving sales of boats and marine products within the zones and districts. This disparate treatment of certain transactions violates this doctrine. By removing the sales tax benefit for retail sales of boats and marine products from the Urban Enterprise Zones Act and the Sales and Use Tax Act, this bill would bring more economic neutrality and horizontal equity within the State.

The proposal of this bill is in response to the many assertions of abuses and unfairness that have been reported to the Division of Taxation, legislative representatives, and to the Commerce and Economic Development Commission. This bill represents a step in the right direction in reforming a Program which has experienced questionable success.

**RECOMMENDATION:**

The Commission recommends enactment of this bill.

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**COMMISSION MEMBERS FOR PROPOSAL: 5**

**COMMISSION MEMBERS AGAINST PROPOSAL: 0**

**COMMISSION MEMBERS ABSTAINING: 1**

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